SUPREME COURT, U.S.

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In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. 73-808

ROBERT C. MILLER,

Petitioner,

vs.

TED W. BROWN, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

AND APPENDIX

ROBERT C. MILLER
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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The petitioner respectfully prays that a writ of certiorari issue to review the orders of the United States Court of Appeals for the Sixth Circuit entered in this proceeding on August 22, 1973 and September 10, 1973.

OPINION BELOW

The orders of the Court of Appeals appear in the Appendix hereto. The orders of the Court of Appeals affirmed the judgment of the United States District Court, Southern District of Ohio, Western Division. The District Court Order also appears in the Appendix.

JURISDICTION

The final order of the Court of Appeals for the Sixth Circuit was entered on September 10, 1973 and this petition for certiorari was filed within 90 days of that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254, subsection (1) or, in the alternative, under common law certiorari, 28 U.S.C. 1651.

QUESTIONS PRESENTED

Were the orders appropriate to the complaint and the appeal?

STATUTORY PROVISIONS INVOLVED

Article XXII of the Amendments to the Constitution of the United States.

STATEMENT OF THE CASE

This suit was originally filed on February 6, 1973 by the petitioner as a class action against Ted W. Brown, Secretary of State of the State of Ohio and certain employees and the members of the Hamilton County Board of Election, State of Ohio. The petitioner sought an injunction to redeem and protect the voting rights of the plaintiff and his class. After amendments to the complaint and motions to dismiss, the district court entered an order to dismiss the case stating there was absolutely no merit to the amended complaint.

On appeal, the appellees moved to affirm the judgment of the District Court. The Court of Appeals for the Sixth Circuit affirmed the judgment of the District Court. A subsequent petition for reexamination of the order was overruled and a motion for leave to file a motion to review en banc was judged to be without merit.

BASIS FOR FEDERAL JURISDICTION

Article III Section 1 of the Constitution of the United States of America states that "The Judicial Power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish". Article III Section 2 states "The Judicial power shall extend to all cases, in law and equity, arising under the Constitution, . . .".

This Court has jurisdiction of the action pursuant to Title 42, U.S.C.A. Section 1983 and 1971, and Title 28, U.S.C.A., Sections 1343 (3) and (4), 1331, 2201, and 2202. (28 U.S.C. 2403 may be applicable.)

REASON FOR GRANTING CERTIORARI

This case presents significant questions which this court should resolve.

The Sixth Circuit Court of Appeals affirmed an order of the District Court which stated that the appellant was asking that an amendment to the Constitution be declared unconstitutional.

This is incorrect as the plaintiff-appellant was asking for an injunction. The appellant is suggesting that an injunction is not an inferior order.

By the amendment process the Congress and the legislatures made a judgment that the voters had abused their privilege of voting by ignoring precedent and electing a man to a third and fourth term as President. It is submitted that Congress improperly extended its authority under Section 4 Article I of the Constitution to "make or alter such regulations" for its own members to that of the regulation of the election of the President.

This action by Congress does not do justice to the concept of separation of powers and makes voting for President a privilege subject to the will of Congress and not the precious right which has been obtained consistent with the preamble to the Constitution which states "We the people . . .". The vote for President unlimited by the limitation of terms in office is citizen power in separating the powers.

The plaintiff-appellant approaches the Court for a remedy on the assumption that the courts and judicial power were incorporated in but not created by the Constitution and are for the people directly.

CONCLUSION

For the reason set forth above, a writ of certiorari should issue to review the judgment of the Sixth Circuit.

Respectfully submitted,

ROBERT C. MILLER
3818 Congreve Avenue
Cincinnati, Ohio 45213

Dated: November 13, 1973

APPENDIX

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Civil Action No. 8719

ROBERT C. MILLER,

Plaintiff,

v.

TED W. BROWN, et al.,

Defendants.

ORDER

(Filed March 19, 1973)

This action is brought praying this Court to declare that the Twenty-second Amendment to the United States Constitution is unconstitutional, i.e., is violative of the First, Ninth, Twelfth, Fourteenth, and Fifteenth Amendments to the Constitution in that it violated the plaintiff's alleged right to vote for a twice-elected President of the United States a third time. The defendants herein have filed motions to dismiss.

There is absolutely no merit to the amended complaint. Therefore, it is dismissed at plaintiff's costs.

/s/ TIMOTHY S. HOGAN
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 73-1409

ROBERT C. MILLER,
Plaintiff-Appellant,

v.

TED BROWN, Individually, and as
Secretary of State of Ohio, et al.,
Defendant-Appellees

ORDER

(Filed August 22, 1973)

Before: WEICK, MILLER and LIVELY, Circuit Judges.

This is an appeal from the district court's dismissal of an action seeking both declaratory and injunctive relief. It is alleged that the 22nd amendment to the United States Constitution is unconstitutional in that it violates the plaintiff-appellant's alleged right to vote a third time for a twice-elected President.

The district court stated succinctly that "there is absolutely no merit to the amended complaint."

On motion of the defendant-appellee to affirm the judgment in the above styled case, and on consideration, the

judgment of the district court is affirmed under 6th Cir. R. 8 (b), it being manifest that the questions on which the decision of the cause depends are so unsubstantial as to need no further argument.

ENTERED BY ORDER OF THE COURT

/s/ JAMES A. HIGGINS
Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 73-1409

ROBERT C. MILLER,
Petitioner-Appellant,

v.

TED W. BROWN, et al.,
Respondent-Appellee.

ORDER

(Filed September 10, 1973)

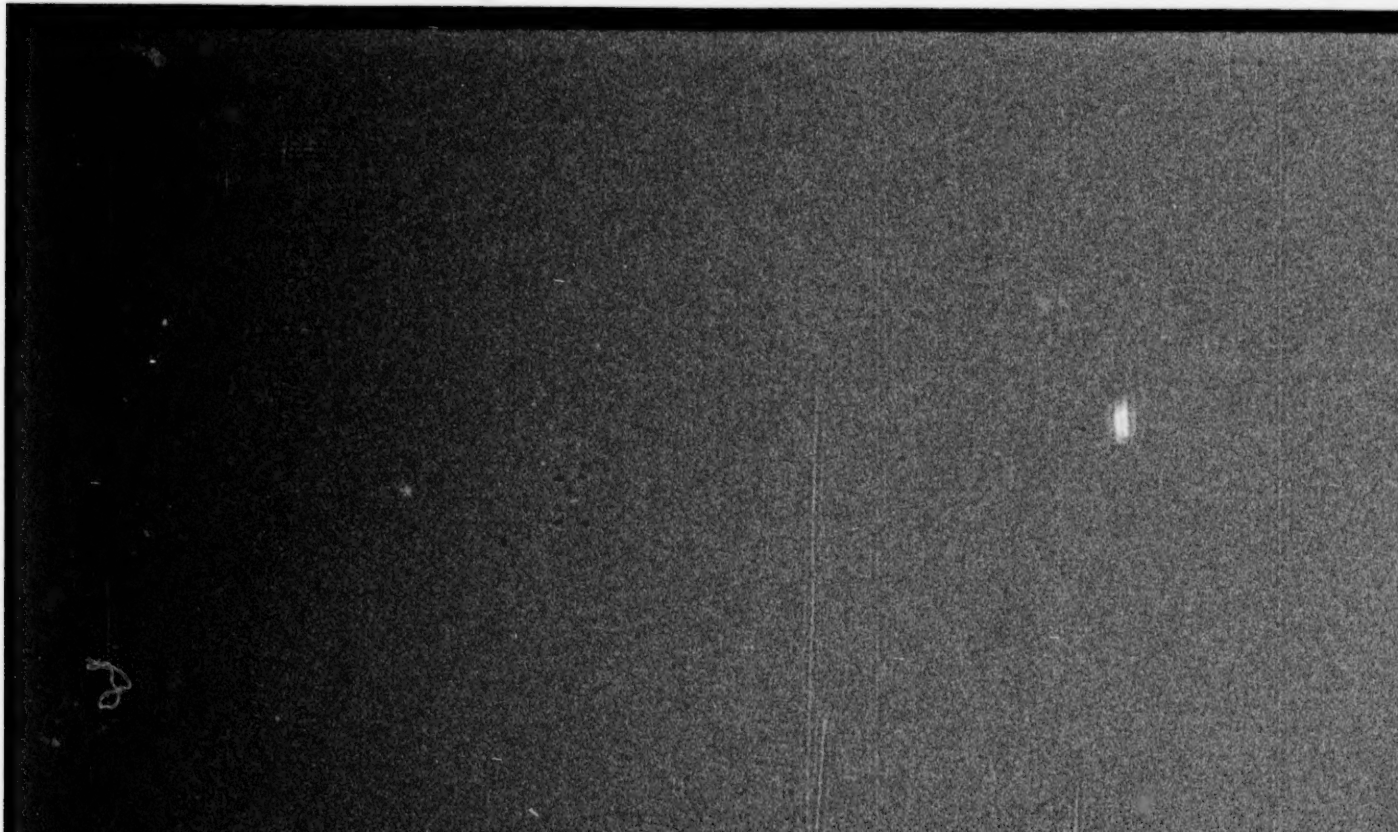
Before: WEICK, MILLER and LIVELY, Circuit Judges.

We have considered the petition for rehearing filed by the petitioner-appellant on August 24, 1973, and we find it to be without merit.

It is accordingly ORDERED and ADJUDGED that the said petition be and the same is hereby overruled.

ENTERED BY ORDER OF THE COURT.

/s/ JAMES A. HIGGINS
Clerk



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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENT TED W. BROWN IN OPPOSITION

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BRIEF FOR RESPONDENT TED W. BROWN IN OPPOSITION

QUESTION PRESENTED

Whether the Twenty-Second Amendment to the Constitution of the United States violates any federally protected right of petitioner.

CONSTITUTIONAL PROVISIONS INVOLVED

ARTICLE V

The Congress whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Pur-

poses, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

TWENTY-SECOND AMENDMENT

Section 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President, or acting as President during the remainder of such term.

STATEMENT OF THE CASE

Petitioner's statement of the case accurately sets forth in chronological order the progression of the case from the date of the filing of the Complaint until the final Order of the United States Court of Appeals For The Sixth Circuit.

ARGUMENT

There Is No Substantial Constitutional Question Involved

The Twenty-Second Amendment to the Constitution of the United States was proposed by Congress on March 24, 1947. It was ratified by a total of 41 states. In March 1, 1951, Jess Larson, Administrator of General Services, certified that it had been adopted by the requisite number of states. 16 F.R. 2019.

Article V of the Constitution provides in pertinent part as follows:

> The Congress whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States.

Once an Amendment is adopted in conformity with the provisions of this Article it is valid to all intents and purposes as part of the Constitution. Petitioner does not even claim that the Twenty-Second Amendment was not validly proposed and ratified. His sole claim is that the limitation violates his right to vote for the president "unlimited by a limitation on terms in office."

Respondent submits that there is no provision of the Constitution which could be construed as conferring such a right. However, any possible claim of such a right was eliminated by the adoption of the Twenty-Second Amendment. Compare: *Hostetter v. Idlewild Bon Voyage Liquor Corp.*, 377 U.S. 324, 330 (1964); *Warner v. United States*, 299 U.S. 59, 64 (1936); *Premier-Pabst Sales Corp. v.*

Grosscup, 12 F.Supp. 970, 972 (Ed. Pa. 1935) affd. 298 U.S. 226 (1936).

CONCLUSION

There is no substantial constitutional question involved herein. None of the considerations, set forth in Rule 19 of the Rules of this Court, governing review on certiorari, are present in this case. The decisions of the lower court are clearly correct.

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

WILLIAM J. BROWN
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State of Ohio

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Counsel for Respondent Ted W. Brown

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On Petition For A Writ Of Certiorari To The United States Court of Appeals For The Sixth Circuit

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Respectfully submitted,

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Counsel for Respondents Hamilton County Board of Elections, and its members or employees, John A. Wiethe, Gordon H. Scherer, Earl T. Barnes, Sidney Weil, Jr., Daniel A. Ruehlmann and Maurice Allen

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PETITION FOR REHEARING OF DENIAL OF A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SITXH CIRCUIT

To The Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States of America:

The petitioner, Robert C. Miller, petitions the Court for a rehearing of the order of this Court rendered on January 21, 1974, denying the Petition for a Writ of Certiorari to review the judgment of the Court of Appeals for the Sixth Circuit rendered on August 22, 1973 and reaffirmed on September 10, 1973, affirming the United States District Court for the Southern District of Ohio, Western District.

A. CERTIFICATE

This petition is presented in good faith and not for delay, and is restricted to grounds of substance although not fully and previously presented, and which grounds are of substantial and controlling effect.

Robert C. Miller

B. GROUNDS FOR PETITION FOR REHEARING

The grounds for this petition for rehearing are based on the cases cited in paragraph 2. of Rule 58 and are submitted because of intervening circumstances of substantial or controlling effect, and other grounds available to petitioner although not previously presented.

ARGUMENT AMPLIFYING GROUNDS FOR PETITION FOR REHEARING

Because a Congress of a number of years ago and ones since could be sideline defendants in this complaint, appeal, and petition, the plaintiff-appellant used defendants typical to previous voting rights cases including Civil No. 8316 in the United States District Court Southern District of Ohio, Western Division wherein three seventeen year olds attempted to obtain the right to vote in a primary election. The plaintiff-appellant in this case was mindful of the constitutional provision in Article One, Section 6 which states "they shall not be questioned in any other place". The plaintiff seeks remedy for himself and his class in the Court not

only because of the Court's authority to provide justice but also because of its representative nature. If the Court will accept the premise that Congress in this is in some nature a defendant, then the examination of this complaint would have some merit. It was reported in the Press on January 8, 1974 that the Senate Watergate Committee submitted to the District Court in Washington, D.C. a memorandum suggesting the possibility of recommendation for a single term for the Office of President. This provides the possibility for discussion of this issue in another district court, a privilege not granted in these courts below on the matter of unlimited terms for the Office of President. Therefor justice may be denied.

There being no Ohio statute "implementing" the 22nd Amendment to the Federal Constitution (See order of June 21, 1973 on Civil 8719 in the District Court below) it is submitted that the Court should have relieved one of the counsels for the defendants that he might have been allowed a role as public defender and supporter and defender of the Constitution of the United States of America.

When elected representatives in over twenty years have indicated no interest in repealing the 22nd Amendment, it appears that an appeal to the Courts is appropriate and is of merit. It is submitted that in the years just before mandatory retirement, the holder of any position has less real power. In March of 1947 when the resolution for the 22nd Amendment was submitted, the nation was at top strength. The nation was great compared to the new struggling nation which imposed no mandatory retirements. It is submitted that the plan that helped our nation to a strength attained in war needs to be reinstated that the nation may better be strong in executive leadership for peace.

It is further submitted that this action is an exercise of a right retained by the people as enacted in Article IX of the Amendments to the Constitution of the United States of America.

CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the judgment of the Sixth Circuit.

Respectfully submitted,

ROBERT C. MILLER
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Cincinnati, Ohio 45213